

FCC MAIL SECTION

Oct 7 3 42 PM Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 92-228 ✓

In the Matter of

Amendment of Section 73.202(b), RM-8079
Table of Allotments,
FM Broadcast Stations.
(Allouez, Wisconsin)

NOTICE OF PROPOSED RULE MAKING

Adopted: September 24, 1992; Released: October 7, 1992

Comment Date: November 27, 1992

Reply Comment Date: December 14, 1992

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Michael R. Walton ("petitioner"), seeking the allotment of Channel 294C3 to Allouez, Wisconsin, as that community's first local broadcast service. Petitioner provided an engineering study in support of the petition and indicated he would apply for the channel, if allotted.

2. We believe the proposal warrants consideration because the proposed allotment would provide a first local service to Allouez, Wisconsin. Channel 294C3 can be allotted to Allouez consistent with the Commission's spacing requirements provided there is a site restriction 7.2 kilometers (4.4 miles) north of the community.¹ The site restriction will prevent a short spacing to Channel 293C1, Station WLJY, Marshfield, Wisconsin, and to the construction permit for Channel 240C3, Station WJLW, De Pere, Wisconsin. Channel 294C3 at Allouez is short spaced to Channel 294A, Station WFDL, Lomira, Wisconsin, and to Channel 240A at De Pere, Wisconsin. However, Channel 249A has been substituted for Channel 294A at Lomira in MM Docket 91-49, 7 FCC Rcd 3779 (1992), and Channel 240C3 has been substituted for Channel 240A at De Pere in MM Docket 89-292, 6 FCC Rcd 2624 (1991). The grant of a license for Allouez may be withheld until Station WFDL and Station WJLW are licensed on the new channels.

3. In view of the above, the Commission believes it would serve the public interest to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

City	Present	Channel No.	Proposed
Allouez, Wisconsin	---		294C3

4. It is further ordered, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

Value Radio
Corporation
Station WFDL
P.O. Box 1490
Oshkosh,
Wisconsin 54903

American Communications
Company
Station WJLW
133 N. Superior Street
De Pere,
Wisconsin 54115

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before November 27, 1992, and reply comments on or before December 14, 1992, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Malcolm G. Stevenson
Schwartz, Woods & Miller
The Dupont Circle Building, Suite 300
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been

¹ The coordinates for Channel 294C3 are 44-30-50 and

served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments

shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.